

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

Joseph W. Diggs,)
Plaintiff,)
-versus-)
State of South Carolina, et al.)
Defendants.)

C. A. No. 2:01-4391-RSCA D. 13
RECEIVED U.S. DISTRICT COURT
2008 JAN 25
DISTRICT OF SOUTH CAROLINA
CHARLESTON, SC

REPORT AND RECOMMENDATION

Plaintiff is an inmate of the South Carolina Department of Corrections ("SCDC") currently confined at Kirkland Correctional Institution. Plaintiff, proceeding pro se, brings this action pursuant to 42 U.S.C. § 1983 alleging that the South Carolina DNA Act violates his constitutional rights.

In accordance with 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02 (D.S.C.), this matter was referred to the undersigned for pre-trial handling. On December 19, 2002, the undersigned issued an order staying the case pending an order in Civil Action No. 2:99-5555. On April 10, 2006, the case was reassigned from United States District Judge Matthew J. Perry, Jr. to United States District R. Bryan Harwell. On June 29, 2006, Judge Harwell entered an order staying this action pending a ruling by the South Carolina Supreme Court in a related case. On April 12, 2007, Judge Harwell lifted the stay. On October 19, 2007, Judge Harwell issued an Order addressing the merits in the lead DNA

case, Civil Action No. 2:99-5555, and entering judgment in favor of the defendants.

This case was recommitted to the undersigned for further proceedings on October 23, 2007.

Given the age of this case and the decision of the court in Civil Action No. 2:99-5555, an Order was entered directing the plaintiff to advise the court within **twenty (20) days** of the date hereof whether they wish to continue this action or to request dismissal in accord with Rule 41(a)(2) of the Federal Rules of Civil Procedure, or otherwise. The plaintiff did not respond.

Based on the foregoing, it appears the plaintiff no longer wishes to pursue this action. Accordingly, it is recommended that this action be dismissed with prejudice for lack of prosecution, and failure to comply with the orders of this court.

Respectfully Submitted,



Robert S. Carr
United States Magistrate Judge

Charleston, South Carolina

January 25, 2008

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Court Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. In the absence of a timely filed objection, a district court judge need not conduct a de novo review, but instead must "only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Diamond v. Colonial Life & Acc. Ins. Co., 416 F.3d 310 (4th Cir. 2005).

Specific written objections must be filed within ten (10) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The time calculation of this ten-day period excludes weekends and holidays and provides for an additional three (3) days for filing by mail. Fed. R. Civ. P. 6(a) & (e). Filing by mail pursuant to Fed. R. Civ. P. 5 may be accomplished by mailing objections to:

Larry W. Propes, Clerk
United States District Court
P.O. Box 835
Charleston, South Carolina 29402

Failure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); United States v. Schronce, 727 F.2d 91 (4th Cir. 1984); Wright v. Collins, 766 F.2d 841 (4th Cir. 1985).